



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2416 of 2011

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T.Kumaran

... Appellant/Claimant

Vs.

1.S.Manimegalai

2.Iffco-Tokio General Insurance Co. Ltd.,
No.28, (Old No.195), 1st & 2nd Floor,
North Usman Road, Chennai - 17.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 29.09.2010, in M.C.O.P.No.2657 of 2007 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant : Mr.S.Gangaram Prasad

For Respondents: R1 - Set exparte
R2 - Mr.N.Vijayaraghavan

JUDGMENT

The appellant is the claimant in M.C.O.P.No.2657 of 2007, on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai. The appellant/claimant has filed this appeal seeking enhancement of compensation.

2.The facts of the case are as follows:

on 19.05.2007 at about 21.30 hours injured appellant was driving his van bearing Registration No.TN-25-H-7980 as owner cum driver from South to North on NH-45, near Chinnaru (Opposite to JM-I Office), Managalamedu, Perambalur District. While so the driver of lorry bearing Registration No.TN-60-8439 employed under the first respondent and during the course and out of his employment came from opposite direction (North to South) on the said road in a rash and negligent manner and dashed against the said van resulting in grievous injuries to the van driver/appellant besides damages to the van. The 1st and 2nd respondents as owner and insurer of the said lorry bearing Registration No.TN-60-8439 are vicariously and stautorily liable for payment of compensation claimed with interest from this date till date of deposit, costs and counsel fee.



3. Based upon the oral and documentary evidence adduced before this Court the Motor Accidents Claims Tribunal has awarded a sum of Rs.1,80,000/- with interest. Having not satisfied with the award of compensation the appellant/claimant has preferred this appeal.

4. Heard both sides and perused the materials available on record.

5. Based upon the oral and documentary evidence the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving by the driver of the lorry having Registration No.TN-60-8439 and the same is not dispute in this appeal and the same is hereby confirmed. On the point of quantum the appellant/claimant has contended that he is the driver cum owner of the van and due to the accident, he is unable to drive the vehicle and his future prospects has been lost in the accident. He has suffered serious damage to the right leg both bones and ficturious bone and multiplier is not yet permitted. In support of the injuries he has examined PW2-Doctor and he has assessed the disability as 50% partially and permanent.

PW2-Dr.Thiagarajan in his evidence has stated that he has examined the appellant on 26.08.2009 and the appellant had sustained fracture of tibia and tribula bones in the right leg and malunited. The implants were still there muscles hardened. The appellant can hold his right knee up to 80%. The movement of the ankle has been reduced by 10%. He has difficulty in driving vehicles. PW2-Doctor has assessed the disability as 50% and partial and permanent and taking in to consideration of the medical evidence of the Doctor coupled with Ex.P2 and P3-the discharge summaries issued by the hospitals whether the injured was taken first treatment and also taking note of the Ex.P15-Disability Certificate, the disability suffered by the claimant/appellant T.Kumaran has been fixed at 50% and the income of the driver is fixed at Rs.60,000/- per annum and loss of income for three months is fixed at Rs.18,000/- and taking in to account all the injuries sustained and also period of treatment, has been enhanced to Rs.60,000/-, transportation charges Rs.10,000/- is awarded, medical expenses based upon Ex.P5 series Rs.34,000/- is granted, for nutrition and extra nourishment Rs.5,000/- is awarded. Since the permanent disability is fixed at Rs.50,000/-, for loss of future earning Rs.50,000/- is added and for permanent disability Rs.1,50,000/- is granted.

6. Besides, taking into consideration all the injuries sustained due to loss of amenities Rs.30,000/- and damage to cloth Rs.2,000/- has granted. In view of the inpatient treatment attender charges is fixed at Rs.10,000/- and



accordingly, Rs.3,69,000/- is awarded and the Iffco-Tokio General Insurance Company is directed to pay the enhanced amount along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

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7. Accordingly, the award of the Tribunal in M.C.O.P.No.2657 of 2007 is modified/enhanced as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of earning from 19.05.2007 to 19.08.2007 (3 months)	Rs. 18,000/-	Rs. 18,000/-
2.	Transport ot hospital	Rs. 5,000/-	Rs. 10,000/-
3.	Extra Nourishment	Rs. 3,000/-	Rs. 5,000 /-
4.	Damages to clothing	--	Rs. 2,000/-
5.	Medical Expenses	Rs. 34,000/-	Rs. 34,000/-
6.	Loss of Amenities	--	Rs. 30,000/-
7.	Loss of future prospects	--	Rs. 50,000/-
8.	Loss of Income	--	Rs. 60,000/-
9.	Pain & Suffering	Rs. 40,000/-	--
10.	Permanent Disability	Rs. 80,000/-	Rs.1,50,000/-
11.	Attender Charges	--	Rs. 10,000/-
	Total	Rs.1,80,000/-	Rs.3,69,000/-

The compensation awarded by the Tribunal is enhanced from Rs.1,80,000/- to Rs.3,69,000/- which shall carry interest at the rate of 7.5% per interest.

8. In the result,

(i) The Civil Miscellaneous Appeal is allowed in part. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,80,000/- to Rs.3,69,000/-.

(iii) The second respondent herein-Iffco-Tokio General Insurance Company is directed to deposit the entire compensation of Rs.3,69,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit M.C.O.P.No.2657 of 2007 dated 29.09.2010 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai within a period of eight weeks from the date of receipt of a copy of this order.



(iv) On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount after following the due process of law.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

arb

To

The Motor Accidents Claims Tribunal,
II Judge, Small Causes Court, Chennai.

+1cc to Mr.S.Gangaram Prasad, Advocate sr.16420

+1cc to Mr.N.Vijayaraghavan, Advocate sr.16704

C.M.A.No.2416 of 2011

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nr 16/10/2019